

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 44, “Iowa Agricultural Development Division,” Iowa Administrative Code.

The purpose of these amendments is to clarify the rules and to simplify and streamline the processes addressed therein.

The Authority does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 22, 2015. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or e-mailed to mark.thompson@iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 16.5D, 16.75, 16.78, 16.81, and 16.83.

The following amendments are proposed.

ITEM 1. Amend the following definitions in rule ~~265—44.2~~**(16)**:

“*BFCF eligible applicant*” means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.81 and the provisions of these rules relating to recipient eligibility ~~as they relate to who operates or will operate a farm.~~

“*BFLP eligible applicant*” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must also be a beginning farmer, as defined in Iowa Code section 16.75, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility ~~as they relate to who operates or will operate a farm.~~

“*BFTC eligible applicant*” means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.80 and the provisions of these rules relating to recipient eligibility ~~as they relate to who operates or will operate a farm.~~

“*Commodity share basis*” means an agreement whereby operation of the agricultural asset is transferred via a risk-sharing mechanism, whereby the agricultural asset owner receives a portion of the production ~~and as~~ payment for use of the agricultural asset.

“*Custom farming contract*” means any commonly accepted written contract which specifies the terms of the work to be performed by the beginning farmer for an Iowa landowner or tenant or livestock owner. The contract must provide for the production of crops or livestock located on agricultural land. The taxpayer will pay the BFCF eligible applicant on a cash basis, and the total amount paid for each tax year that the tax credit is claimed must equal at least \$1,000. The contract must be in writing for a term of not more than ~~12~~ 24 months. A contract is not allowed if the taxpayer and BFCF eligible applicant are: persons who hold a legal or equitable interest in the same agricultural land or livestock; related family

members, such as spouse, child, stepchild, brother, or sister; or partners in the same partnership which holds a legal or equitable interest.

“*LPP eligible applicant*” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must be a low-income farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan and who satisfies all of the criteria contained in the Act and the provisions of these rules relating to recipient eligibility as they relate to who operates or will operate a farm.

“*Projected gross income*” means the total of all nonfarm income plus gross farm revenues which include revenue from cash sales, inventory and receivable charges, crops, livestock products, government program payments, and other farm income received by the borrower during the next calendar year.

“*Term debt coverage ratio*” means the total of net farm income from operations plus total nonfarm income plus depreciation/amortization expense plus interest on term debt plus interest on capital leases minus total income tax expense minus withdrawals for family living multiplied by 100 and divided by the sum of annual scheduled principal and interest payments on term debt and the annual scheduled principal and interest payments on capital leases. The ratio provides a measure of the ability of the borrower to cover all term debt and capital lease payments. The greater the ratio over 100 percent, the greater the margin to cover the payments.

ITEM 2. Amend subrule 44.4(2) as follows:

44.4(2) Application procedures. The BFLP eligible applicant may apply for a BFLP loan with any bond purchaser. Any BFLP loan approved will be assigned to that bond purchaser. BFLP loan eligibility is determined by the requirements of the Act and the rules of the authority.

a. to d. No change.

e. ~~Following approval and issuance of the bond, the authority will enter into a loan agreement with the BFLP eligible applicant and then assign the BFLP loan without recourse to the bond purchaser.~~ The authority may charge fees as needed to defray its costs for processing the BFLP loan and bond.

ITEM 3. Amend subrule 44.4(6) as follows:

44.4(6) Assignment of BFLP loans by bond purchasers. A bond purchaser may assign a BFLP loan in whole or in part to any person, as defined in Iowa Code section 4.1(20). Serving Servicing of the BFLP loan may also be assigned. The authority must be notified in writing prior to assignment of the BFLP loan.

ITEM 4. Amend subrule 44.5(3) as follows:

44.5(3) Eligible projects and activities.

a. to e. No change.

f. *Interim financing by lender.* Interim financing by the lender ~~may be done~~ is allowed.

ITEM 5. Amend subrule 44.5(5) as follows:

44.5(5) Program parameters.

a. *Purchase price impact.* Maximum LPP loan amount ~~is the lesser of:~~ and loan terms will be determined by the IADD board.

(1) ~~Thirty percent of the purchase price; or~~

(2) ~~\$150,000.~~

b. ~~LPP loan terms.~~ The authority has established the following with respect to LPP loan terms:

(1) ~~The maximum amortization period for the LPP loan is 7 years for depreciable agricultural property. When a participated loan is made for livestock, the length of the LPP loan is restricted to the expected useful life of the animal being purchased.~~

(2) ~~LPP loan payments on participated real estate loans will be equally amortized for the term of the LPP loan, but shall not exceed a 20-year amortization, including a 10-year term with balloon payment and the balance of the LPP loan paid in full by the end of the tenth year. If utilized in conjunction with federal programs, the amortization will be consistent with federal rules.~~

(3) ~~b.~~ LPP interest rate. The IADD board will set the interest rate on the LPP loan.

c. *LPP loans outstanding.* Loans under the program may be issued more than once, provided that the outstanding LPP loan totals do not exceed \$150,000 to any single borrower the maximum amount set by the IADD board.

ITEM 6. Amend subrule 44.5(6) as follows:

44.5(6) LPP loan application procedures.

a. *Financial statement.* Lenders may use their own form of financial statement ~~and.~~ The authority may require other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments. ~~A copy of the borrower's most current financial statement (generally prepared one month preceding application submission), the prior two years' financial statements, and a projected after-closing financial statement must be submitted with the application.~~

If the borrower or the borrower's spouse is involved in a business, partnership, limited liability company, or corporation, either related or unrelated to the borrower's farming operation, a financial statement from this entity must also be submitted with the application.

b. and c. No change.

d. *Credit evaluation.* The lender will submit a credit evaluation of the project for which an LPP loan is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of an LPP loan. ~~Such evaluation will center on whether:~~

~~(1) The borrower adequately demonstrates the ability to service the debt requirements of the participated loan based on cash flow, net worth, down payment, and collateral pledged for the participated loan.~~

~~(2) The borrower provides sufficient collateral to adequately secure the participated loan and keep the participated loan collateralized throughout its term.~~

~~(3) The lender certifies that all of the borrower's debts will be current at the time the participated loan is closed.~~

~~(4) The applicant is a low income farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan with the authority.~~

~~(5) The lender certifies that no other private or state credit is available or can be obtained in a timely manner.~~

e. to g. No change.

ITEM 7. Amend subrule 44.6(2) as follows:

44.6(2) Application procedures.

a. No change.

b. Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name and address, e-mail address if available, social security number, length of the lease, type of lease, and location of the agricultural asset to be leased. In addition, the application shall have attached to it a copy of the lease agreement between the parties.

(2) BFTC eligible applicant information: name and address, e-mail address if available, ~~social security number,~~ and location of the asset to be leased. In addition, the application shall have attached to it a copy of the BFTC eligible applicant's most recent financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFTC eligible applicant documenting to the satisfaction of the authority sufficient training, experience and access to capital. This letter may be submitted by one or more of the following: the BFTC eligible applicant, the taxpayer or another third party.

c. Complete applications shall be processed in the order they are received by the authority.

ITEM 8. Amend subrule 44.6(3) as follows:

44.6(3) Execution of an agricultural assets transfer agreement. In addition to the requirements of rule 265—44.6(16), both the taxpayer and the BFTC eligible applicant shall execute an agricultural assets

transfer agreement. ~~This form shall be in a format~~ The form used by the Iowa State Bar Association or other shall be a commonly accepted form and signed by all parties.

ITEM 9. Amend subrule 44.6(4) as follows:

44.6(4) Procedures following tax credit approval. Either the BFTC eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. Written approval from the authority is required if the change impacts the amount of the tax credit awarded. The authority shall act upon these changes pursuant to Iowa Code section 16.80. ~~Material changes cannot result in an increase in the original tax credit amount approved.~~

ITEM 10. Amend rule 265—44.7(16) as follows:

265—44.7(16) Beginning farmer custom farming tax credit program.

44.7(1) General provisions.

a. *Term.* The term of the credit shall not exceed ~~one year~~ the term of the contract, except that any unused credit may be carried forward for a period of ten years if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

b. *Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.

c. *Expiration of custom hire contract.* The BFCF eligible applicant will continue to be eligible during the ~~year~~ years of the custom farming contract. Upon expiration of the contract, both the taxpayer and BFCF eligible applicant must reapply to qualify for subsequent tax credits.

44.7(2) Application procedures.

a. The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the BFCF eligible applicant.

b. Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name and address, e-mail address if available, social security number, and description ~~and location~~ of the custom hire work completed. In addition, the application shall have attached to it a copy of the custom hire contract between the parties.

(2) BFCF eligible applicant information: name and address, e-mail address if available, ~~social security number, and location of where~~ description of the custom hire work was completed. In addition, the application shall have attached to it a copy of the BFCF eligible applicant's most recent financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFCF eligible applicant documenting to the satisfaction of the authority sufficient training, experience and access to capital. This letter may be submitted by one or more of the following: the BFCF eligible applicant, the taxpayer or another third party.

c. No change.

44.7(3) Execution of custom farming contract. In addition to the requirements set forth in rule 265—44.7(16), both the taxpayer and the BFCF eligible applicant shall execute a custom farming contract. ~~This form shall be in a format provided by the authority or other~~ The form used shall be a commonly accepted forms form and signed by all parties.

44.7(4) No change.

44.7(5) Procedures following tax credit approval. Either the BFCF eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the custom hire contract. Written approval from the authority is required if the change impacts the amount of the tax credit awarded. The authority shall act upon these changes pursuant to Iowa Code section 16.81. ~~Material changes cannot result in an increase in the original tax credit amount approved.~~ ~~Death of a party to the contract, divorce, or sale of the property will be considered eligible material changes.~~

ITEM 11. Amend **265—Chapter 44**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 16.4A, 16.4B, 16.5D, and 16.75 to 16.84.